

REMARKS

The Office Action of February 28, 2007, has been received and reviewed. Claims 1, 6-12, and 14-20 are currently pending in the application. Claims 12 and 14-20 were previously withdrawn from consideration. Claims 1 and 6-11 are under consideration. Claims 1 and 6-11 stand rejected. Claims 1, 8, and 12 are amended herein. All amendments are made without prejudice or disclaimer.

Priority

Applicants note that their request to be granted an amended priority right under 37 C.F.R. § 1.55(c) was not granted as the request was not provided in the form of a petition. For the convenience of the Examiner, a copy of the petition for amended priority right under 37 C.F.R. § 1.55(c) filed contemporaneously with this response is enclosed herein. Upon granting of the petition, applicants respectfully request the acknowledgement of a right of priority to the parent of Van Berkel et al.

Specification

The Specification stands objected to as containing a priority reference to an application to which priority has not yet been accorded. Applicants duly note the rejection and respectfully submit that the rejection will become moot when the petition for an amended priority right under 37 C.F.R. § 1.55(c) is granted (*see supra*).

Rejections under 35 U.S.C. § 112, Second Paragraph

Claims 1 and 6-11 stand rejected under 35 U.S.C. § 112, second paragraph, as assertedly being indefinite. Specifically, it was asserted that claims 1 and 8 are indefinite as “the metes and bounds of a ‘stable’ transfection are unclear”, and the Examiner specifically questioning whether Applicant intends such a transfection wherein the IgA molecule in expressible format is integrated into the genome of the cell. Office Action mailed February 28, 2007, at page 8. Claims 2, 7, and 9-11 stand rejected as depending from assertedly indefinite claims 1 and 8. Applicants respectfully traverse the rejections as hereinafter set forth.

Although applicants do not agree that any of the claims are indefinite, to expedite prosecution, claims 1 and 8 have been amended herein. Specifically, claims 1 and 8 have been amended to recite “wherein the recombinant nucleic acid encoding the IgA molecule in expressible format is integrated into the genome.” Applicants respectfully submit that this addition to claims 1 and 8 further defines the type of “stable” transfection referred to in the claims and thus makes the claims more definite.

In view of the foregoing, applicants respectfully request the withdrawal of the rejections of claims 1 and 8 under 35 U.S.C. § 112, second paragraph, and reconsideration of same. In addition, as claims 6, 7, and 9-11 were rejected as depending from assertedly indefinite claims 1 and 8, applicants respectfully request the withdrawal of the rejections of claims 6, 7, and 9-11 under 35 U.S.C. § 112, second paragraph, in view of the remarks *supra* and reconsideration of same.

Rejections under 35 U.S.C. § 102(e)

Claims 1, 6-7, and 9-11 stand rejected under 35 U.S.C. § 102(e) as assertedly being anticipated by Van Berkel *et al.* (U.S. Patent Application 2005/0170398) (hereinafter “Van Berkel”). Applicants respectfully traverse the rejections as hereinafter set forth.

When the unclaimed subject matter of a patent, application publication, or other publication is applicant’s own invention, a rejection, which is not a statutory bar, on that patent or publication may be removed by submission of evidence establishing the fact that the patentee, applicant of the published application, or author derived his or her knowledge of the relevant subject matter from applicant. M.P.E.P. § 715.01(c).

Applicants respectfully submit that the enclosed Declaration of Abraham Bout under 35 U.S.C. § 1.132 unequivocally establishes that the patentees of Van Berkel derived their knowledge of the subject relating to the encoding and production of IgA antibodies in PER.C6 cells solely from Dr. Bout. As such, applicants respectfully submit that portions of Van Berkel relating to the encoding and production of IgA antibodies in PER.C6 cells cannot be used as the basis of a rejection under 35 U.S.C. § 102(e) as it is not “by another.”

In view of the foregoing, applicants respectfully request the withdrawal of the rejections

of claims 1, 6-7, and 9-11 under 35 U.S.C. § 102(e) and reconsideration of same.

Rejoinder

Applicants respectfully request rejoinder of claims 12 and 14-20. If an applicant elects claims directed to a product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all elements of the allowable product claim will be rejoined. MPEP § 821.04; *see also In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995); *In re Brouwer*, 77 F.3d 422, 37 USPQ2d 1663 (Fed. Cir. 1996). Applicants respectfully submit that claims directed to a product (*e.g.*, claim 1) were previously elected by the applicants. Applicants further note that claims 12 and 14-20 include all elements of product claim 1. In addition, applicants currently believe product claim 1 to be in condition for allowance. As such applicants respectfully request rejoinder of process claims 12 and 14-20 which include all elements of an allowable product claim.

CONCLUSION

In light of the above amendments and remarks, applicants respectfully request reconsideration of the application. If questions remain after consideration of the foregoing, or if the Office should determine that there are additional issues which might be resolved by a telephone conference, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel J. Morath". The signature is fluid and cursive, with the first name "Daniel" and last name "Morath" clearly distinguishable.

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